United States v. *Green*, 433 F.2d 946, 948 (5 Cir. 1970) 9
United States v. *Hale*, 397 F.2d 427 (7 Cir. 1968) 12
United States v. *Hall*, 421 F.2d 540 (2 Cir. 1969), cert. denied, 397 U.S. 990, 25 L.Ed.2d 398, 90 S.Ct. 1123 (1970) 29
United States v. *Hayes*, 385 F.2d 375 (4 Cir. 1967), cert. den. 390 U.S. 1006, 88 S.Ct. 1250, 20 L.Ed.2d 106 36
United States v. *Hodge*, 487 F.2d 945 (5 Cir. 1973) 10, 17
United States v. *Kinsey*, 352 F.Supp. 1176 at 1178 (E.D. Penn. 1972) 6
United States v. *Knight*, 261 F.Supp. 843 (E.D. Pa. 1966) 31
United States v. *Littlepage*, 435 F.2d 498 (5 Cir. 1971), cert. den. 402 U.S. 915, 91 S.Ct. 1374, 28 L.Ed.2d 657, reh. den. 402 U.S. 1013, 91 S.Ct. 2187, 29 L.Ed.2d 436 31
United States v. *Manni*, 270 F.Supp. 103 (D. Mass. 1967), Aff'd 391 F.2d 922 (1 Cir. 1968) ... 31
United States v. *Mansfield*, 318 F.2d 961 (7 Cir. 1967) 33
United States v. *Montos*, 421 F.2d 215 (5 Cir. 1970), cert. den. 397 U.S. 1022, 90 S.Ct. 1262, 25 L.Ed.2d 532 29
United States v. *Osterburg*, 423 F.2d 704 (8 Cir. 1970), cert. den. 399 U.S. 914, 90 S.Ct. 2216, 26 L.Ed.2d 571 33
United States v. *Priest*, 409 F.2d 491 (5 Cir. 1969) 14
United States v. *Slaughter*, 366 F.2d 833 (4 Cir. 1966) 14

BLEED THROUGH

United States v. *Springer*, 460 F.2d 1344 (7 Cir. 1972) 13

United States v. *Young*, 471 F.2d 109 (7 Cir. 1972), cert. den. 412 U.S. 929, 93 S.Ct. 2755, 37 L.Ed.2d 156 35

Wilson v. *United States*, 398 F.2d 331 (5 Cir. 1968) 11

BLEED THROUGH

In The

Supreme Court of the United States

OCTOBER TERM 1975

No. 75-1006

CAROLEE BIDDY,
Petitioner,

vs.

FRED DIAMOND, SHERIFF, JACKSON COUNTY JAIL, and JACK REED, WARDEN OF THE MISSISSIPPI STATE PENITENTIARY,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

OPINIONS BELOW

The opinion of the Mississippi Supreme Court is reported as *Biddy* v. *State*, 277 So.2d 115 (Miss. 1973). The opinion of the Court of Appeals for the Fifth Circuit is reported as *Biddy* v. *Diamond*, 516 F.2d 118 (5th Cir. July 18, 1975).

JURISDICTION

The jurisdiction requisites are adequately set forth in the Petition.

STATEMENT OF THE CASE

Petitioner, Carolee Biddy, was indicted by the Grand Jury of Hinds County, Mississippi, on April 22, 1971, for the crime of murdering her five-year-old mentally-retarded step-daughter, Mona Biddy. On March 22, 1971, Petitioner, by and through her attorneys, filed a motion for change of venue in view of the pre-trial publicity which had surrounded the death of the deceased, and on April 2, 1971, the Circuit Court of the First Judicial District of Hinds County, Mississippi, entered an order changing the venue to the Circuit Court of Jackson County, Mississippi.

Petitioner was tried in that court; however, a mis-trial was declared when the jury was unable to agree on a verdict. Petitioner was re-tried in that court, and on September 5, 1972, the petit jury returned a verdict of guilty of manslaughter. For her crime, Petitioner was sentenced to serve a term of twenty years in the Mississippi State Penitentiary wherein she is presently incarcerated.

On January 8, 1973, the Supreme Court of Mississippi, by written opinion, affirmed Petitioner's conviction. A petition for rehearing was duly filed, and on February 26, 1973, the Supreme Court of Mississippi, by a written opinion wherein all the Judges concurred, denied the petition for re-hearing. The opinion of the Supreme Court of Mississippi and the opinion of the Court in denying the petition for re-hearing are reported as *Biddy* v. *State*, 277 So.2d 115 (Miss. 1973).

BLEED THROUGH

A petition for writ of certiorari was then filed in the Supreme Court of the United States. After reviewing the precise issue which is again presented here, the petition was denied on October 7, 1973. *Biddy* v. *Mississippi*, 414 U.S. 866, 38 L.Ed.2d 118, 94 S.Ct. 46, and on December 3, 1973 the Supreme Court denied the petition for rehearing. *Biddy* v. *Mississippi*, 414 U.S. 1087, 38 L.Ed.2d 493, 94 S.Ct. 610.

Petitioner then filed a petition for writ of habeas corpus with the United States District Court for the Southern District of Mississippi pursuant to 28 U.S.C. §2241 et seq. Pursuant to that petition evidentiary hearings were conducted by the District Court on February 3, 1974, and on April 11, 1974.

On April 23, 1974, the District Court entered a written opinion denying the application for writ of habeas corpus. A copy of the opinion is attached to Petitioner's brief as Appendix C. A notice of appeal was filed and a certificate of probable cause was signed by the District Judge as required by 28 U.S.C. §2253.

On July 18, 1975 the United States Court of Appeals for the Fifth Circuit affirmed the decision of the District Court. A copy of the opinion is attached to Petitioner's brief as Appendix D.

STATEMENT OF THE FACTS

The facts of this case as reported in *Biddy* v. *Diamond*, 516 F.2d 118 (5th Cir. 1975) are correct and are adopted here. Where necessary, a more complete recitation of the factual situation appears in the argument.

ARGUMENT

Whether Appellant Knowingly Waived Her Right to Remain Silent and Her Right to the Presence of Her Attorney When She, After Twice Executing Waivers and Then Requested Her Attorney, Stated That She Understood Her Rights and Gave a Statement

The uncontradicted proof before this Court is that on December 15, 1970, Petitioner, a 32-year-old high school graduate who had worked as a secretary for an engineering firm, voluntarily went to Police Headquarters where she was advised of her rights; that her rights were then read to her; that she was questioned individually about each right and stated that she understood them; and that she signed a written waiver. [Reeves D.C. Tr. 194; Price 274-275; 2d Tr. 340, 351, 300, 366].

It is also uncontradicted that she volunteered to take a polygraph examination that afternoon; that her rights were again read to her; and that she signed another waiver.

The evidence before this Court also shows that she was not again questioned until December 27, 1970 [D.C. Tr. 200], on which day she was asked if she understood her rights and she replied that she did [(Reeves) D.C. Tr. 206-207, (Price) 280].

Assuming, but not admitting, the Petitioner was in custody or deprived of her freedom in a significant way on December 27, 1970, were further *Miranda* warnings required?

Perhaps this question is best answered by *People* v. *Hill*, 39 Ill.2d 125, 233 N.E.2d 367 (1968), wherein the court stated:

BLEED THROUGH

> "To adopt an automatic second-warning system would be to add a perfunctory ritual to police procedures rather than providing the meaningful set of standards envisioned by *Miranda*. *Gorman* v. *United States*, 380 F.2d 158, 164 (1st Cir.)."

Failure of police to repeat the *Miranda* warnings prior to the taking of the defendant's third and fourth "in custody" statements was assigned as error in *State* v. *Rowe*, 468 P.2d 100 (Wash. 1970). The court stated:

> "Defendant was properly informed of his rights at the time of his arrest and again before giving his first and second written statements. *Miranda* does not require the police to make repeated recitations of a defendant's constitutional rights before the taking of each subsequent statement. *State* v. *Blanchey*, 75 Wash. Dec.2d 935, 54 P.2d 841 (1969); *State* v. *Lucia*, 74 Wash.2d 819, 447 P.2d 606 (1968). Having been informed of his rights three times and having intelligently waived them, statements taken within the next 48 hours cannot be said to have been made without knowledge of his rights."

In *Miller* v. *United States*, 396 F.2d 492 (8th Cir. 1968), the court was faced with the issue of whether *Miranda* warnings must be given each time the interrogation process resumes. The court stated:

> "It is difficult to lay down a rule of general application, and we will not attempt to do so here. In each case the ultimate question is: Did the defendant, with a full knowledge of his legal rights, knowingly and intelligently relinquish them?" (396 F.2d at 496).

United States v. *Anthony*, 474 F.2d 470, 473 (5th Cir. 1973) held: "there is no requirement that an accused be continually reminded of his rights once he has intelligently waived them."

As stated by the First Circuit in *Gorman* v. *United States*, 380 F.2d 158, 164 (1st Cir. 1967):

> "In the first place, advocacy of an automatic second-warning system misunderstands and downgrades the warnings required by *Miranda*. Their purpose was not to add a perfunctory ritual to the police procedure but to be a set of procedural safeguards 'to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it. * * *' While the police interrogators must faithfully carry out *Miranda's* mandate at the threshold, they may then proceed to elicit responses, however incriminating, without further specific warnings."

Petitioner next urges that the effectiveness of the *Miranda* warnings dissipated during the twelve-day period between December 15 and December 27—that the December 15 warnings had become stale.

In *United States* v. *Kinsey*, 352 F.Supp. 1176 at 1178 (E.D. Penn. 1972), the court stated:

> "There is no requirement that the *Miranda* warnings be repeated immediately prior to the commencement of every interrogation session. They do not become 'stale': *Commonwealth* v. *Abrams*, 443 Pa. 295, 298-301, 278 A.2d 902 (1971)."

The Ohio Court in *State* v. *Gallagher*, 36 Ohio App.2d 29, 301 N.E.2d 888, 890 (1973), held:

BLEED THROUGH

> "The law is established that there is no requirement to repeat the warnings during subsequent questionings, even if several weeks elapse and further questioning is conducted by other persons."

Petitioner relies upon *Brown* v. *State*, 252 A.2d 272, 275 (Md. 1969), for the proposition that *Miranda* required that she be readvised of her rights on December 27, 1970. Even in that case the court stated:

> "We quite agree with the cases which hold that the *Miranda* warnings need not be given anew nor the *Miranda* waiver expressed each time the officers question the accused."

Petitioner also relies upon *People* v. *Schenk*, 24 Cal. App.3d 233, 101 Cal. Rptr. 75 (1972); however, the court stated:

> "[W]e hold that a repeated and continued warning need not precede every twist and turn in the investigatory phase of the criminal proceeding. Rather, as was stated in *People* v. *Brockman* (1969), 2 Cal. App.3d 1002, 1006, 83 Cal. Rptr. 70, 73: 'The determination, in each case, is whether the *Miranda* warning sufficiently informs a defendant of his constitutional rights so that he has an understanding of those rights during subsequent interrogations. [Citations.]' If the Record reflects that the defendant comprehended during subsequent interrogation the precedent *Miranda* warnings, the requirements of *Miranda* have been satisfied."

See also: *Maguire* v. *United States*, 396 F.2d 492 (9 Cir. 1968), cert. den. 393 U.S. 1099 (1969); *Tucker* v. *United States*, 375 F.2d 365 (8 Cir. 1967), cert. den.

389 U.S. 888 (1967); *State* v. *Magee*, 52 N.J. 352, 245 A.2d 339 (1968).

On two separate occasions on December 15, the Petitioner was advised of her rights and signed waiver forms. She was not questioned between that date and December 27, when she was told that she had been informed of her rights previously and asked if she understood them. She replied that she did. (D.C. Tr. 206).

On both dates the conversations were with the same officers, the conversations occurred in the same location, and the officers had made no attempt to dilute Petitioner's understanding or knowledge of her rights. At the evidentiary hearing below Petitioner was asked if she knew that she did not have to talk to the officers. She refused to give a direct answer but stated: "I don't think I really thought about it." (D.C. Tr. 185). The record clearly indicates the Petitioner had full knowledge of her rights and intelligently relinquished them.

What effect did Petitioner's December 15, 1970, request to have her lawyer have upon her December 27, 1970, statements? Petitioner contends the request "nullified" her prior unquestionably valid waivers, thereby rendering the December 27th statement inadmissible and in support of that contention relies upon the following statement from *Miranda* v. *Arizona*, 384 U.S. 436, 16 L.Ed.2d 694, 86 S.Ct. 1602 (1966):

> "If the individual states that he wants an attorney, the interrogation must cease until an attorney is present. At that time, the individual must have an *opportunity* to confer with the attorney and to have him present during any subsequent

BLEED THROUGH

> questioning. If the individual cannot obtain an attorney and he indicates that he wants one before speaking to the police, they must respect his decision to remain silent." (Emphasis added) 384 U.S. at 474, 16 L.Ed.2d at 723.

However, *Miranda* v. *Arizona*, *supra*, held that even if interrogation is continued after a request but without the presence of an attorney the statements might be admissible if the defendant knowingly and intelligently waived his privilege.

In *United States* v. *Green*, 433 F.2d 946, 948 (5th Cir. 1970), it was held:

> "Miranda did not hold that once an accused expresses a desire to have counsel present the door to present or future interrogation is forever closed. The right to have counsel present can be waived."

Cf. *United States* v. *Brown*, 459 F.2d 319 (5th Cir. 1971), cert. den. 409 U.S. 864, 93 S.Ct. 155, 34 L.Ed. 2d 111 (1972).

A waiver in *United States* v. *Green*, *supra*, was found under more suspect circumstances than exist in the instant case. Here, Petitioner was not under arrest at the time of any interrogation; in both cases the questioning ceased when a request for counsel was made; and in both cases the individual being questioned acknowledged awareness and understanding of his rights.

In *United States* v. *Appell*, 259 F.Supp. 156 (D. Mass. 1966), an officer advised the defendant to accompany him to his office where defendant was advised of his rights. The defendant called his attorney and

while waiting for the attorney to arrive gave damaging admissions. The Court found the defendant was aware of his rights and in fact executed them, and the statements made in the attorney's absence were admissible.

In *United States* v. *Hodge*, 487 F.2d 945 (5th Cir. 1973), the defendant was arrested and advised of his *Miranda* rights. He requested an attorney and the interrogation was terminated. After being advised of the procedure for obtaining counsel the defendant elected to give a statement after waiving his right to counsel. The defendant contended that once he requested counsel there could be no further interrogation. The Court held that the defendant's request for an attorney evidenced an understanding of his rights; that an arrestee could change his mind after requesting counsel; and that the defendant had voluntarily and freely waived the right. In the instant case the Petitioner evidenced her understanding of her rights by requesting her counsel; by noting that the law enforcement officers ceased their questioning when asked, and that the officers left her home when requested.

In *United States* v. *Dority*, 487 F.2d 846 (6th Cir. 1973), the defendant, after being advised of his rights by an FBI agent, stated that he did not want to make a statement but would like to consider it for a few days. Counsel was appointed and the agent, although he did not know of the appointment of counsel, readvised the defendant of his rights. The Court held that the agent was under no Constitutional duty to refrain from talking to the defendant out of the presence of his attorney since the defendant's right to have counsel present was waived by his act of signing the waiver.

BLEED THROUGH

In *Wilson* v. *United States*, 398 F.2d 331 (5 Cir. 1968), cert. den. 393 U.S. 1069, 89 S.Ct. 727, 21 L.Ed.2d 712 (1969), the arrested defendants after having counsel appointed and being advised of their rights, refused to give a statement. Later, law enforcement officers knowing that counsel had been appointed for the defendants, were able to obtain a statement. The defendants contended that since the officers knew counsel was appointed they were prohibited from interrogating them without the presence of their counsel. This Court rejected the argument by stating:

> "It appears without dispute that appellants made oral admissions to agents of the Federal Bureau of Investigation out of the presence of appellants' counsel, the agents knowing that counsel had been appointed for appellants. That fact alone will not in our opinion render inadmissible the admissions made, as held in Coughlan v. United States, 391 F.2d 371 (9 Cir. 1968)." (398 F.2d at 333).

The Ninth Circuit, in *Coughlan* v. *United States*, 391 F.2d 371 (9 Cir. 1968), cert. den. 393 U.S. 870, 89 S.Ct. 159, 21 L.Ed.2d 139 (1968), found that the defendant was interrogated in jail by officers who knew that he was represented by counsel. Defendant's counsel was not present at the interrogation and had no notice of it. The Court stated:

> "Under this state of the facts, appellant contends that his Constitutionally guaranteed right to counsel was effectively denied. We are asked to rule that any statement, admission or confession secured by peace officers from a defendant represented by an attorney, where the attorney was not

timely advised of the proposed interview or interrogation, be rejected as violative of the right to counsel. Appellant recognizes that this Sixth Amendment right may be voluntarily waived, but, at oral argument, it was contended that such a waiver would never be knowingly and truly voluntary unless counsel was present to advise the client.

It may well be that the day is approaching when the right to counsel may be expanded to the point where an accused may only be interrogated by the police in the presence of his lawyer. However, no persuasive precedent for the holding here sought has come to our attention. Appellant relies heavily on the teaching of Miranda v. State of Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966). Miranda specifically recognizes prior cases holding that the right to counsel may be waived. Here a clear and knowing waiver was shown. We are unwilling to attempt to expand the Miranda ruling to the extent sought by appellant." (391 F.2d at 371).

In *United States* v. *Hale*, 397 F.2d 427 (7 Cir. 1968), the sheriff requested the defendant to follow him to his office, which the defendant did. An attorney was then appointed to represent him and the attorney talked with the defendant at length that day. The next day the attorney was told that FBI officers were coming to interrogate the defendant and the attorney advised the two officers that his client was prepared to cooperate. Although he did not inform the police officers to call him, it was his intention to be present at any interrogation and he assumed that he would be called. He had earlier told the defendant to *say nothing unless he were present.* The FBI agents

BLEED THROUGH

arrived, advised defendant of his rights and at that time the defendant made a statement out of the presence of his attorney. The Court found the admissions to be the product of a waiver and admissible into evidence.

In the instant case the Petitioner, her husband, and her attorneys cooperated with the police; however, her attorney never advised the police not to question his client unless he was present. The Seventh Circuit, in a leading case, *United States* v. *Springer*, 460 F.2d 1344 (7 Cir. 1972), cert. den. 407 U.S. 873, 93 S.Ct. 205, 34 L.Ed.2d 125 (1972), found that the government agents presented a signed waiver form to the defendant and that the defendant had stated that he understood his rights. The Court held that such was sufficient to raise a presumption of validity of waiver and shift the burden of going forward to the accused who must present some facts tending to show the waiver was not voluntary or knowledgeable. The Court also acknowledged that the fact that a defendant has an attorney does not mean, as per se rule, that law enforcement officers cannot procure a statement of any kind from defendant without prior notice to, if not the consent of, the attorney.

The facts in the instant case clearly show that Petitioner was aware of her Constitutional rights and effectively waived them. The Petitioner has failed to put on sufficient proof to show otherwise. In *United States* v. *Springer*, *supra*, the Court also held that a district court's determination that a defendant's oral and written confessions were given after waivers of *Miranda* rights is entitled to substantial deference and would not be overturned if it was substantially supported. The Supreme Court of Mississippi, the Federal District

Court and Fifth Circuit Court of Appeals have, after considering the evidence, found the statements were given after a voluntary and knowing waiver. The findings of those Courts are substantiated by the Record and their decisions should not be overturned.

In *Dillon* v. *United States*, 391 F.2d 433 (10 Cir. 1968), the defendant, at the request of the city police, went to the police station and was placed in an interview where he was interrogated by agents of the FBI who also advised him of the charges pending against him and his Constitutional rights.

In *Dillon* v. *United States, supra,* the Court stated:

> "It is further contended by Dillon that after counsel had been retained for him the FBI agent interviewed him without his counsel being present and this procedure tainted the admissions. We do not agree. The fact that Dillon's counsel was not present at the time the admissions were confirmed does not ipso facto render them inadmissible. Butterwood v. United States, supra, at 383 of 365 F.2d. The presence of counsel can be waived as well as demanded. Certainly, if an accused can waive the right to counsel when that right first attaches, Adams v. United States ex rel. McCann, 317 U.S. 269, 279, 63 S.Ct. 236, 87 L.Ed. 268 (1942); Leighton v. Cox, 365 F.2d 122 (10 Cir. 1966), he can waive the right to have counsel present subsequent to the counsel's appointment or retainment. The chief concern in each case is that the waiver be intelligently made."

Petitioner relies primarily upon *United States* v. *Slaughter*, 366 F.2d 833 (4 Cir. 1966), and *United States* v. *Priest*, 409 F.2d 491 (5 Cir. 1969). In each

BLEED THROUGH

of those cases the Court looked to the statement in *Miranda* that:

> "Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut off questioning, the settling of in-custody and interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked. If the individual states that he wants an attorney, the interrogation must cease until an attorney is present. *At that time, the individual must have an opportunity to confer with the attorney and have him present during any subsequent questioning.*" (Emphasis added) (384 U.S. at 473-474, 86 S.Ct. at 1627-1628, 16 L.Ed.2d 723).

Miranda, supra, and its progeny do require that if an individual requests counsel while he is undergoing custodial interrogation the interrogation must cease. In the cases relied upon must heavily by the Petitioner, the defendants did, in fact, request the assistance of counsel and none was provided. Their statements were taken without ever seeing or discussing the matter with an attorney. However, the authorities do not require that a defendant in fact talk or consult with an attorney. The last portion of the above quoted statement in *Miranda, supra,* provides that the defendant must have an "opportunity" to consult with an

attorney—it does not require him to do so. In the cases relied upon most heavily by Petitioner the defendants were not permitted the opportunity to exercise their right.

In the instant case the Petitioner did in fact request an attorney after taking the polygraph examination on December 15th. The important factor is that she was then given the opportunity to consult with her attorney and in fact she went to her home where she was met by her attorney.

After consulting with her attorney the Petitioner was once again free to remain silent and to say nothing without the presence of her attorney. Having full knowledge of those rights she knowingly and voluntarily waived them on December 27th.

In *United States* v. *Daulton*, 488 F.2d 524 (5 Cir. 1973), cert. den. 416 U.S. 989, 94 S.Ct. 2396, 40 L.Ed.2d 767 (1974), it was contended that the confession admitted at trial was obtained in violation of Daulton's *Miranda* rights. A full advisory was given at the first interview on December 26, 1972, at which time he chose to say nothing. Thirteen days later, Daulton sent for the government agents so he could tell them his side of the story. At that time a second advisory was given which failed to include notification of the right to appointed counsel if he could not afford one. Affirming Daulton's conviction, this Court observed:

> "The second warning was given by the same interviewing officer who had first given the Miranda warnings in a full and complete form. There was further evidence that prior to his confession the appellant had a conversation with the prison warden

BLEED THROUGH

> in which he stated his awareness of his entitlement to an attorney. In this situation, having been given the full warning on an occasion when he declined to talk, and being aware of his entitlement to counsel, we attribute no reversible significance to the inadvertent omission of a portion of the warning on the second occasion. See United States v. Springer, 7 Cir. 1972, 460 F.2d 1344; United States v. Hopkins, 5 Cir., 1970, 433 F.2d 1041; Maguire v. United States, 9 Cir. 1968, 396 F.2d 327. The fact that Daulton requested the second interview and was warned by identically the same man who had previously warned him, negates any idea of involuntariness generated by failure to mention a fact already known to the prisoner." (488 F.2d 524 at 525).

On December 15, 1970, Petitioner was fully and completely advised of her Constitutional rights and signed a written waiver and later that same day was again advised and signed a second waiver. On December 27, 1970, the Petitioner was requested to go to the police station where she was told that she had been informed of her rights before and was asked if she remembered and understood them to which she replied affirmatively. On both the 15th of December and the 27th of December, the Petitioner was advised and reminded of her rights by the same officers in the same location. The officers had done nothing to dilute the effect of the warnings previously given. Under such circumstances the Petitioner knowingly and voluntarily waived her right to remain silent. The fact she, on the evening of December 15, 1970, had requested and obtained the presence of her counsel is the clearest evidence that she understood her rights and could invoke them at will. See: *United States* v. *Hodge*, 487 F.2d 945 (5 Cir. 1973).

It is also important to note that when the Petitioner was advised of her rights for the second time on December 15, 1970, she stated that they had previously been explained to her and she knew what her rights were. (2d Tr. 206) (D.C. Tr. 76).

When the Petitioner gave her statement on December 27, 1970, and before Attorney Poole arrived at the police station, Reeves and Price asked her if she would go to the Ross Barnett Reservoir and point out the spot where she had left her stepdaughter's body. She stated: "She said she'd be glad to." (2d Tr. 296). And, she agreed to show them the location the next morning. The next morning, December 28, Reeves went to the jail and asked the Petitioner if she still wanted to carry them to the Reservoir. She replied affirmatively, stated that she had told the truth, and stated that she wanted to get it all straight. (2d Tr. 297). At the hearing below Reeves testified that he told Petitioner on two occasions on the morning of the 28th that she did not have to go to the Reservoir and show them where she had placed her stepdaughter's body. She stated that she wanted to get the matter cleared up. (D.C. Tr. 213-215). Price also testified at the evidentiary hearing below that Petitioner was advised that she did not have to go to the Reservoir if she did not desire to do so. (D.C. Tr. 284). On the morning of December 28, 1970, policewoman Nancy McAleer was requested to accompany Reeves and Price and the Petitioner. At the hearing below she testified that on that morning Petitioner applied her makeup, brushed her hair and indicated that she was ready to go. McAleer testified that Reeves said: "Mrs. Biddy, you know you don't have to do this, and she replied that she wanted to get everything straightened out." The statement was made before they got into the automobile and, after they got

BLEED THROUGH

into the automobile Reeves again told Petitioner that she did not have to go. (D.C. Tr. 268, 269).

After Petitioner had given her statement on December 27th and agreed to accompany Reeves and Price to the Reservoir to show them where she had placed the body of her stepdaughter, Attorney Poole arrived and informed the Petitioner not to sign a statement. Reeves testified that Poole only told the Petitioner not to "sign" anything. (D.C. Tr. 244). Petitioner's only testimony was that Poole had told her not to "sign" anything. (D.C. Tr. 153).

Petitioner argues that later that night and before they went to the Reservoir the next morning Reeves and Price attempted to demean Attorney Poole in an effort to subvert her trust in her attorney. This contention is clearly not supported by the record. (D.C. Tr. 154-156, 217, 250-251).

Petitioner alleges that she was taken to the location where her stepdaughter was found even though Reeves and Price knew Attorney Poole had told her not to sign anything. It must be emphasized that the right to counsel and the right to remain silent are personal rights which can be invoked or waived solely by Petitioner—not her husband or attorney. In *Jordan* v. *United States*, 421 F.2d 493 (9 Cir. 1970), the defendant's attorney had advised him not to discuss the case with the law enforcement authorities. The Court found that the defendant had been advised of his rights and willingly made the statement which was his privilege. The Court also stated:

> "It is argued by appellant that because he did not make any recorded response to the warning and because his attorney was not present at any of these interviews he could not and did not make any affirmative waiver. We are not referred to any author-

ity in support of such proposition, and know of none."

An overview of the facts in this case clearly indicates Petitioner was at all times aware of her Constitutional rights and that she knowingly, voluntarily, and intelligently elected to waive her right to remain silent. Her statement was freely given with full knowledge of the consequences.

From December 4th to the 15th the officers saw the Biddys every day. "In fact, several times we saw them several times a day. Many times at their request, especially Mr. Biddy and sometimes Mrs. Biddy." The Biddys were very friendly toward these officers; "she welcomed us to her home, she asked us questions. Mr. Biddy was very friendly. We felt at home there." (D.C. Tr. 190).

Ted Biddy told the officers he thought his daughter had been kidnapped by a maniac. (D.C. Tr. 191).

On December 8, 1970, the body of the missing child was found in a reservoir. Mr. Biddy came to the scene and identified the body. On the 14th he called Officer Reeves and asked if Mona was wearing leotards when she was found. Reeves testified, "Her legs were real white, and it did look like she had on some white leotards. I told him that she did not, she had on a dress, an undershirt and panties. He said wait a minute, now there's something wrong because Mona never wore undershirts. He said somebody had kidnapped her and they changed her clothes. That undershirt doesn't belong to this family." (D.C. Tr. 191).

Consequently, on the 15th, the officers called Mrs. Biddy and asked her to come to headquarters and identify

BLEED THROUGH

the clothing. Both appellant and her husband went to headquarters and upon seeing the undershirt recognized it as a pajama top which they stated was, in fact, part of their children's clothing. (D.C. Tr. 192).

The officers then asked the Biddys if they could talk to them and the Biddys agreed.

Appellant, Officers Reeves and Price and the County Attorney from Rankin County (where the child's body had been found) went into an interrogation room which is the only facility available in the building for the interviewing of witnesses. At this time Petitioner was given a *Miranda* advisory. She was asked if she understood that and replied that ". . . she understood exactly what we were talking about." She then read and signed the waiver and the officers and county attorney placed their signatures on the waiver. (D.C. Tr. 194).

Describing this event, Petitioner testified:

By Mr. Hancock:

Q: Were you in custody at that time?

A: No. (Emphasis supplied).

Q: Did they advise you of your rights at that time?

A: They read my rights, yes.

Q: Did you sign a written waiver?

A: Yes, I did.

* * *

By Mr. Hancock:

Q: After you had signed this waiver and the police officers had, were no longer questioning you, were you allowed to go, to leave the headquarters?

A: Yes, I did. (D.C. Tr. 166).

Petitioner was alert and there was no question but that she understood her rights as explained.

Later that afternoon the Biddys were asked to take a polygraph exam and drove to the Highway Patrol building in their own car. Ted Biddy offered to take the polygraph test first and was introduced to Dewey Weems who was to administer the test. On direct examination at the district court hearing he testified:

Q: And were your rights explained to you prior to the time that the test was given?

A: Yes, sir. They were. (D.C. Tr. 80).

By the Court:

Did Mr. Biddy pass his test all right?

By the Witness:

No, sir.

By the Court:

Sir?

By the Witness:

He did not pass.

By the Court:

Both of them flunked the test?

By the Witness:

Yes, sir. (D.C. Tr. 68).

There was never any question but that appellant would be tested next (D.C. Tr. 65) and Weems explained her *Miranda* rights to her.

BLEED THROUGH

Q: And I believe you testified that you did have her sign a written waiver?

A: *That's correct.*

Q. Did she make any statement in regards to understanding her rights?

A: Yes, sir. When I asked her to read and if she understood to sign this waiver of her rights, her being entitled to a lawyer and her right to remain silent, *she made the statement that she knew what her rights were.* That the police officers had explained her rights to her and that she had an attorney. (D.C. Tr. 76) (Emphasis supplied).

Two polygrams were then run which revealed discrepancies in her story.

By Mr. Weems:

A: I was explaining the polygrams to her and the discrepancies in it and she made the request that she wanted to speak with her attorney.

Q: What did you do at that point?

A: I immediately stopped the examination, took the attachments off of Mrs. Biddy, asked her to get her coat off of the coat rack in the corner, and escorted her back out of the examination room. (D.C. Tr. 76).

Petitioner was then taken to her husband who telephoned Charles Wright, an attorney. (D.C. Tr. 36, 81, 117). Ted Biddy told the officers something was wrong with the test and asked the officers to come to his house and discuss it. The officers declined but Biddy insisted and the officers agreed to come out there later on. (D.C. Tr. 198).

Thereafter, the officers did meet Charles Wright at the Biddy home. Mrs. Biddy was not in the room. There was some discussion of the polygraph test between Ted Biddy and the officers.

By Mr. Hancock:

Q: Who was doing the questioning?

A: Mr. Biddy was asking the questions and the detectives were replying to him.

Q: By detectives you mean Reeves and Price?

A: Yes, that is correct.

Q: Was Carolee Biddy present?

A: At a time later after the initial discussion started.

Q: Was she present during at least part of the discussion concerning the lie detector test?

A: Yes, she was.

* * *

Q: What brought this conversation concerning the lie detector test to an end?

A: I assume I did because when I said that, that this is not the time or the place for this the *detectives immediately got up, agreed and left the premises.*

Q: *Were they hesitant about leaving?*

A: No.

Q: *Did they insist on questioning Carolee Biddy?*

A: *No.* (D.C. Tr. 51, 52) (Emphasis supplied).

Parenthetically, it should be noted at this point that on the evening of December 16, Petitioner reported a

BLEED THROUGH

stabbing incident in which she claimed an unidentified attacker had stabbed her. The Biddys called Officer Reeves to come to their house after the attack and they talked briefly about the attack but nothing else. No questions were asked concerning the disappearance of Mona. (D.C. Tr. 200). Reeves did not talk to Petitioner again until December 26 when he received a midnight phone call from Ted Biddy reporting that their two-year-old baby had been kidnapped and found outside. (D.C. Tr. 200, 201).

Early the next morning, Reeves and Price went to the Biddy home to look for clues relative to the incident the night before and were told by Mr. Biddy that he was taking his entire family to Georgia that day. The officers asked Mr. Biddy to call them before leaving and when he did they told him they felt they needed to talk to him. They went to his house and asked if he and Mrs. Biddy would come to headquarters to talk and Mrs. Biddy asked if it were necessary that she go. "She said all right she would go and then Mrs. Biddy's mother was there and said how long will they be gone? I said I don't think it will be long." The officers told the Biddys to go in their own car so the officers would not have to bring them back. (D.C. Tr. 204). No one was under arrest.

Upon arrival at the station the Biddys were placed in separate interrogation rooms and the officers told Ted Biddy of the results of their investigation thus far, i.e., that they believed the stabbing and kidnapping instances had been staged and that some things she had previously told them did not check out and he agreed and asked to speak to her. (D.C. Tr. 205).

Ted Biddy and Officer Price brought Petitioner across the hall into the interrogation room; Mr. Biddy

asked her about one of the incidences and about that time the phone rang and Reeves was told Charles Wright was downstairs. Reeves left the room and returned with Wright who was joined by Ted Biddy. (D.C. Tr. 90, 206).

Here it is worthy of emphasis that at the district court hearing, Wright testified he did not recall talking to Petitioner during the interval between the December 15 meeting and December 28th (D.C. Tr. 54) on which date he received a telephone call from Mal Sims asking him to go to police headquarters. (D.C. Tr. 39).

While these two men conversed Reeves returned to the interrogation room and told Petitioner ". . . there is a possibility that we will want to talk to you a little later. Do you remember and understand the rights that we have given you before?" She said that she did. He was satisfied she knew her rights as she was a normal, intelligent woman who had twice before been given complete advisorys and had previously successfully exercised her privilege of calling her attorney. (D.C. Tr. 206, 207).

When Wright left he told Reeves he was ill and would send John Poole in his place. Wright never told either Petitioner or her husband not to answer any questions. (D.C. Tr. 57).

Reeves testified he did not know if Petitioner ever saw Wright. After Wright left Reeves returned to the interrogation room. Ted Biddy asked his wife about some of the incidents and she admitted that these stories were not the truth. (D.C. Tr. 175).

Reeves then said, "Mrs. Biddy, why don't you tell him if you had anything to do with Mona's disappearance."

> She looked at him and had him by the hands and she said, Ted, I'm sorry, I didn't mean to do it. It floored me when I heard it. I wasn't expecting it, and then both of them cried and then stopped and she went on and told the story about finding the baby dead in bed and being afraid she would be accused of having something to do with the death and she took it out to the reservoir and put it at a place where they used to go when they were courting. (D.C. Tr. 209).

Reeves then asked if Petitioner "would mind" him taking her statement in writing. She agreed and shortly after Reeves began typing her statement he received a call that John Poole was downstairs. Reeves brought him upstairs and Poole and the Biddys conferred privately (2d Tr. 295, D.C. Tr.) after which Poole told the officers he did not want her signing any statement and left. Poole told the officers and the Biddys he would return the next morning.

Neither of the officers ever attempted in any way to prevent Petitioner from seeing either of the attorneys (2d Tr. 296, 346-357) nor did she or her husband tell the officers she did not wish to talk to them. (2d Tr. 338, 348).

After conferring with Chief of Police Tullos, appellant was arrested for the murder of Mona Biddy. (2d Tr. 458-459).

On the morning of December 28, the officers asked Petitioner if she would accompany them to the reservoir

as she had agreed the day before (prior to Poole's arrival) to show them where she placed the body. Twice they told her she did not have to go but she stated she had told the truth and wanted to get it straight. (2d Tr. 297). At the district court hearing Petitioner testified:

> Q: What happened on the morning of December 28, 1970? I believe that's the morning you went out to the reservoir.
>
> A: They came that morning, got me out of my cell and took me to the reservoir.
>
> Q: Were you told that you did not have to go?
>
> A: Yes, I was.
>
> Q: Why did you go?
>
> A: Because they said if I cooperated with them they would help me.
>
> Q: Did you have anything to hide?
>
> A: No.
>
> Q: Did you know that you did not have to go to the reservoir with them?
>
> A: Lieutenant Reeves said, you know you don't have to go, but, I was already in the car and I went. (D.C. Tr. 182).

Is *Miranda* applicable here? Was she in custody when her statements were made?

The Fifth Circuit has held that probable cause for arrest, the subjective intent of the police, subjective belief of the defendant and focus of the investigation are only factors to consider in determining whether there were present the compulsive factors with which

BLEED THROUGH

Miranda was concerned. *United States* v. *Carolla*, 507 F.2d 50 (1975), cert. den. .... U.S. ...., ... S.Ct. ...., 46 L.Ed.2d 105 (1975).

United States v. *Montos*, 421 F.2d 215 (5 Cir. 1970), cert. den. 397 U.S. 1022, 90 S.Ct. 1262, 25 L.Ed.2d 532 discussed the compulsive factors as follows:

> "The 'salient factors' of the cases decided in Miranda were 'incommunicado interrogation of individuals in a police-dominated atmosphere.' Miranda v. Arizona, 384 U.S. 436, 445, 86 S.Ct. 1602 (1966). The Miranda procedures are intended to combat the effect which such a 'compelling atmosphere,' *id.* at 478, 86 S.Ct. at 1630, has upon the exercise of constitutional rights. They are meant to preclude law enforcement personnel from performing 'their traditional investigatory functions,' *id.* at 481, 86 S.Ct. at 1631, such as '[g]eneral on-the-scene questioning of citizens in the fact finding process * * *.' *id.* at 477, 86 S.Ct. at 1629. Unless restraint of an individual by law enforcement personnel is 'significant' Miranda warnings are not required." (421 F.2d at 222).

The Fifth Circuit has also held that a defendant is not in custody within the purview of *Miranda* when he, at the request of an officer, appears and subjects himself to questioning at the office of a law enforcement officer. *Menendez* v. *United States*, 393 F.2d 312 (5 Cir. 1968), cert. den. 393 U.S. 1029, 89 S.Ct. 639, 21 L.Ed.2d 572.

In *United States* v. *Hall*, 421 F.2d 540 (2 Cir. 1969), cert. denied, 397 U.S. 990, 25 L.Ed.2d 398, 90 S.Ct. 1123 (1970), the Court held that Miranda warn-

ings need not be given prior to questioning even if the questioning is not conducted while the defendant is in custody.

In *Hicks* v. *United States*, 382 F.2d 158 (D.C. Cir. 1967), the police considered the defendant a suspect and carried him to police headquarters. The Court rejected the defendant's contention that she thought she was under arrest and concluded, among other things, that the detectives needed to have transcribing facilities available which were located at headquarters. The Court held that the detective's statement that he "wanted" her to come to headquarters rather than "requesting" or "inviting" her did not alter the situation. The Court noted "there were none of the familiar concomitants of arrest, e.g., searching, booking, fingerprinting, to negate the statement of police that Appellant was simply being interrogated as an important witness." 382 F.2d at 162. The Court also noted that "the investigation here was not initiated by the police but came after Appellant voluntarily reported a homicide; Appellant, not police, set the inquiry in motion." There was no "custodial interrogation" in the *Miranda* sense. Questioning of a witness cannot be characterized as "custodial interrogation simply because it occurs at the police station." 382 F.2d at 162. The Court further states:

> Nor is there anything in the record to indicate that appellant had been deprived of her freedom of action in any significant way; since she never attempted to leave the presence of the police it cannot be said that her presence at headquarters was against her will, especially as it is now clear that her conduct and very presence at the police station were part of her attempt to put the police on a

wild goose chase in search of the mythical "jitterbug" attackers. (382 F.2d at 162).

In *United States* v. *Knight*, 261 F.Supp. 843 (E.D. Pa. 1966), an investigator advised Knight to come to the investigator's office for questioning. Knight went to the office where he was given an inadequate advisory of his rights. He was questioned about a crime for which he was suspect and gave damaging admissions. The Court held the questioning was not custodial interrogation as Knight was under no compulsion to go to the investigator's office and had been free to leave. The Court also found no evidence to support and rejected Knight's argument that he was in constructive custody since he voluntarily appeared at the office but did so under fear and similar psychological factors.

And, in *United States* v. *Littlepage*, 435 F.2d 498 (5 Cir. 1971), cert. den. 402 U.S. 915, 91 S.Ct. 1374, 28 L.Ed.2d 657, reh. den. 402 U.S. 1013, 91 S.Ct. 2187, 29 L.Ed.2d 436, the Fifth Circuit considered among other things in finding no custodial interrogation the fact that the defendant was not told he was under arrest.

Likewise, several courts have considered the presence of friends as an indication of non-custody. *Archer* v. *United States*, 393 F.2d 124 (5 Cir. 1968) (suspect's husband); *United States* v. *Manni*, 270 F.Supp. 103 (D. Mass. 1967), Aff'd. 391 F.2d 922 (1 Cir. 1968) (suspect's wife); *State* v. *Noriega*, 433 P.2d 281 (Ariz. App. 1967) (suspect's wife); *State* v. *Tellez*, 431 P.2d 691 (Ariz. App. 1967) (suspect's friends); *Stout* v. *State*, 426 S.W.2d 800 (Ark. 1968) (suspect's wife); *People* v. *Butterfield*, 65 Cal. Rptr. 876 (Cal. App. 1968) (sus-

pect's mother); *State* v. *Davis*, 157 N.W.2d 907 (Iowa 1968) (doctors and nurses); *Jones* v. *State*, 234 A.2d 900 (Md. App. 1967) (suspect's girl friend); *McFadden* v. *State*, 231 A.2d 910 (Md. App. 1967) (suspect's wife); *People* v. *Allen*, 281 N.Y.S.2d 602 (N.Y. App. 1967) (suspect's family); *State* v. *Gray*, 150 S.E.2d 1 (N.C. 1966) (suspect's cousin); *Commonwealth* v. *Barclay*, 240 A.2d 839 (Pa. App. 1968) (suspect's family).

Thus, on December 27, 1970, the date on which petitioner made her damaging admission, she was not subjected to custodial interrogation. She had voluntarily gone to the police station, she was under no compulsion to stay, she could have left at any time, and she was not required to answer any questions. Therefore, according to the cases cited above, there was no requirement that Petitioner be given her *Miranda* warnings. Statements given by her would be admissible in evidence without having been advised of her *Miranda* warnings and having knowingly and voluntarily waived them. Petitioner on two previous occasions had been advised of her *Miranda* rights and had signed waivers. Likewise, on the date in question the Petitioner was informed that she had been told her rights previously, and she was asked if she understood them, and she replied that she did. At the time she was not in the presence of her husband, but she had never been refused access to her attorney. She had voluntarily gone to the police headquarters with her husband. As shown by the facts, the police merely wanted to talk to Petitioner and her husband before they left the State of Mississippi. Under the circumstances there was no requirement that the *Miranda* warnings be given.

On the date in question, petitioner's husband was informed of statements made by the Petitioner which

BLEED THROUGH

the police believed to be false. The Petitioner's husband confronted her with these facts and she admitted that the statements she had been making in the past were false. In *People* v. *Sunday*, 79 Cal. Rptr. 752 at 756 (Cal. App. 1969), the Court stated:

> The entire thrust of the Miranda policy is to insure that a defendant's decision to confess or not is based upon a free and intelligent approval of his position. The appraisal may be better made if a defendant is aware of the nature and extent of evidence or information in the possession of the police.

As stated previously, petitioner had at least on two occasions been fully advised of her *Miranda* rights and had signed written waivers. Once *Miranda* warnings have been given, they need not be repeated prior to a second interrogation. *Maguire* v. *United States*, 396 F.2d 327 (9 Cir. 1968), cert. den. 393 U.S. 1099, 89 S.Ct. 897, 21 L.Ed.2d 792; *United States* v. *Osterburg*, 423 F.2d 704 (8 Cir. 1970), cert. den. 399 U.S. 914, 90 S.Ct. 2216, 26 L.Ed.2d 571; *United States* v. *Mansfield*, 318 F.2d 961 (7 Cir. 1967); *Miller* v. *United States*, 396 F.2d 492 (8 Cir. 1968), cert. den. 393 U.S. 1031, 89 S.Ct. 643, 21 L.Ed.2d 574.

It is well settled that whether *Miranda* warnings must be repeated before a second interrogation must be determined on a case by case method.

As stated in *Jennings* v. *United States*, 391 F.2d 512, 515 (5 Cir. 1968), cert. den. 393 U.S. 868, 21 L.Ed.2d 136, 89 S.Ct. 154 (1968):

> [W]hat the Court sought to interdict in Miranda were those situations in which the police had indicated a desire to exercise his constitutional right of

> silence but the police refused to take 'no' for an answer.

As noted in *Boulden* v. *Holman*, 394 U.S. 478, 22 L.Ed.2d 433, 89 S.Ct. 1133 (1969):

> [T]he question whether a confession was voluntarily made necessarily turns on the 'totality of the circumstances' in any particular case. 394 U.S. at 487.

See also *Clewis* v. *Texas*, 386 U.S. 707, 18 L.Ed.2d 423, 87 S.Ct. 1338 (1967); *Greenwald* v. *Wisconsin*, 390 U.S. 519, 20 L.Ed.2d 77, 88 S.Ct. 1152 (1968); *Darwin* v. *Connecticut*, 391 U.S. 346, 20 L.Ed.2d 630, 88 S.Ct. 1488 (1968); *Frazier* v. *Cupp*, 394 U.S. 731, 22 L.Ed.2d 684, 89 S.Ct. 1420 (1969).

As submitted above there was no requirement that Petitioner at any time be advised of her *Miranda* rights; however, in the case at bar Petitioner signed two waivers and subsequently gave a verbal affirmation that the previously given admonitions were known and understood. There can be no doubt that the waiver was knowingly and unequivocally demonstrated.

Petitioner also alleges that after signing a waiver of *Miranda* rights on December 15, 1970, she had stated that she wanted her husband and attorney. At that time the uncontradicted evidence shows that the questioning ceased, and petitioner was free to do whatever she pleased. She and her husband returned to their home where they talked with their attorney. Petitioner now alleges that by requesting her attorneys she could not be questioned at a later date.

In *Dillon* v. *United States*, 391 F.2d 433 (10 Cir. 1968), cert. den. 393 U.S. 889, 89 S.Ct. 208, 21 L.Ed. 2d 168, the defendant was interviewed without the pres-

BLEED THROUGH

ence of his counsel and gave damaging admissions. The Court held that just as counsel may be waived when the right first attaches, the right may be waived subsequent to counsel's appearance.

In *United States* v. *Young*, 471 F.2d 109 (7 Cir. 1972), cert. den. 412 U.S. 929, 93 S.Ct. 2755, 37 L.Ed. 2d 156, the defendant was arrested by police officers and was advised of his rights. The defendant expressed a desire to talk to his attorney. He was later turned over to the postal authorities where he was again advised of his rights and signed a waiver and gave a statement. The Court held that there was no violation of *Miranda* as the defendant chose to speak rather than exercise his right to remain silent. In *United States* v. *Grady*, 423 F.2d 1091 (5 Cir. 1971), the defendant was arrested by city police and after being given his *Miranda* warnings stated that he would answer no questions and would like the assistance of counsel. Counsel was not furnished and on the next day defendant was interrogated by a special agent of the FBI at which time he made certain admissions. The defendant argued that the statements were inadmissible because he had expressed a desire for an attorney and was later questioned after making the request. The Fifth Circuit held that the statements were admissible and stated:

> A decision in appellant's favor on this point would be tantamount to holding that an arrestee could not change his mind once he had stated that he would not be interviewed without an attorney. (423 F.2d at 1093).

At no time was Petitioner denied access to an attorney. To the contrary, the evidence clearly indicates

that she was in constant contact with an attorney. Her admissions made on December 27, 1970, were not in violation of *Miranda* v. *Arizona, supra.* Immediately prior to giving the statements Petitioner admitted that she understood her rights.

Admittedly, Petitioner on December 15, 1970, stated that she wanted to see her lawyer and attorney. She was permitted to do so which in itself is a strong indication that anytime she expressed an interest in seeing an attorney there would be no questioning.

According to Petitioner's own evidence, her attorney knew that she would be interviewed on the date in question, and in fact, he appeared at the site of the interview.

In *United States* v. *Hayes,* 385 F.2d 375 (4 Cir. 1967), cert. den. 390 U.S. 1006, 88 S.Ct. 1250, 20 L.Ed.2d 106, the defendant was given the *Miranda* warnings and was permitted to make a telephone call, but was never asked if he understood the warnings or desired counsel, and he did not volunteer any information. He never confessed, but did make some incriminating statements during thirty minutes of questioning, which he suddenly terminated by declaring that he would answer no more questions and demanding that he be allowed to see a lawyer. The Court concluded his later assertion of his rights made it clear that he understood the warnings and knew how to exercise his right. In the case at bar the petitioner on two occasions had been advised of her *Miranda* rights and had signed waivers. She stated that she wanted an attorney on one occasion and all questioning ceased. By making such a demand, and by noting the results of her demand, petitioner was well aware that she would not

BLEED THROUGH

be questioned without assistance of counsel if she did not knowingly and voluntarily consent thereto.

Petitioner now alleges that the police officers suppressed evidence by failing to state until this time that she had ever requested the assistance of counsel and that as a result of her demand all questioning ended. However, Petitioner is the one who made the demand for an attorney. There can be no suppression of statements which Petitioner made. Her acts were within her own knowledge.

As regards Petitioner's accompanying the officers to the reservoir on December 28, it is readily apparent that this was a voluntary act on her part. She was twice told she did not have to go. (D.C. Tr. 215, 268, 269, 284 2nd Tr. 297). She testified at the hearing that she was told she did not have to go. (D.C. Tr. 182). There is not the vaguest hint in any record before this Court that her actions on the 28th were coerced or induced by pressure from the officers. On this point *Miranda* is most explicit:

> Volunteered statements of *any kind* are not barred by the Fifth Amendment and their admissibility is not affected by our holding today. (384 U.S. at 478).

Upon a consideration of the circumstances attendant the making of the subject statements, this Court, the United States Court of Appeals for the Fifth Circuit, the United States District Court and the Mississippi Supreme Court have all determined that the Petitioner knowingly, intelligently and voluntarily waived her rights under *Miranda* after having received the appropriate warnings. At no time has there been any evidence that the rights of this Petitioner were violated

or infringed upon in any manner nor does the instant Petition disclose anything to the contrary.

CONCLUSION

Respondent respectfully submits that the Petitioner was very much aware of her *Miranda* rights which she elected to waive before making her statement. The Petitioner's circumstances pose no question of particular moment or indecision in the case law of the land and it is therefore respectfully submitted that the petition for Writ of Certiorari should in all justice be denied as being without merit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Karen Gilfoy, Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a copy of the foregoing Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit to F. Lee Bailey, Esquire, One Center Plaza, Boston, Massachusetts 02108, Mark J. Kadish, Esquire, Edward T. M. Garland, Garland, Nuckolls & Kadish,

BLEED THROUGH

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This, the 1st day of April, A. D., 1976.

KAREN GILFOY
Assistant Attorney General